

## **REMARKS**

This is a full and timely response to the nonfinal Office Action of August 6, 2003.

Reconsideration and allowance of the application and all presently pending claims are respectfully requested.

Upon entry of this Response, claims 1-9, and 14-27 are pending in this application. Claims 1-9 have been elected. Claims 1, 2, and 4-6 have been directly amended herein. Claims 14-29 are newly added. The prior art made of record has been considered, but is not believed to affect the patentability of the presently pending claims. Applicants believe that no new matter has been added and that a new search is not required to examine the amended claims and the newly added claims.

## **CLAIMS**

### **Double Patenting Rejection**

Claims 1, 3, and 6 have been provisionally rejected under the judicially created doctrine of obvious-type double patenting as being unpatentable over claims 1, 2, 6, 7, 9, and 14 of U.S. Patent Application 10/074420, in view of US Patent 3,950,073.

Although the Applicants traverse the rational presented in the Office Action, a Terminal Disclaimer is filed herewith in compliance with 37 C.F.R. §1.321(c) to overcome the provisional double patenting rejection. Accordingly, the Applicants respectfully request that the double patenting rejection to pending claims 1, 3, and 6 be withdrawn.

In filing the Terminal Disclaimer, the Applicants rely upon the rulings of the Federal Circuit that the filing of such a Terminal Disclaimer does not act as an admission, acquiescence, or

estoppel on the merits of the obviousness issue. “In legal principal, the filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither presumption nor estoppel on the merits of the rejection.” Quad Environmental Tech v. Union Sanitary, 946 F.2d 870, 874 (Fed. Cir. 1991); and Ortho Pharmaceutical Corp. v. Smith, 959 F.2d 936, 941-942 (Fed. Cir. 1992).

**Claim 1**

Claim 1 is rejected under 35 U.S.C. §102(b) and §102(e) as purportedly being anticipated by the references US 3,950,073 and US Application 2002/0076188, respectively. Claim 1, as amended, reads as follows:

1. A waveguide comprising:  
a waveguide core;  
an air-gap cladding engaging a portion of the waveguide core; and  
***an overcoat layer engaging a portion of the air-gap cladding.***

(Emphasis added). The Applicants traverse the rejections and submit that the rejections of claim 1 under 35 U.S.C. §102 should be withdrawn because the references (US 3,950,073 and US Application 2002/0076188) do not disclose, teach, or suggest the highlighted portions in amended claim 1 above. Thus, the rejection to claim 1 should be withdrawn.

In addition, the Applicants respectfully submit that pending dependent claims 2-5 and 14-16 include every feature of independent claim 1. Thus, pending dependent claims 2-5 and 14-16 are allowable over the prior art of record. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

### Claim 6

Claim 6 is rejected under 35 U.S.C. §102(b) and §102(e) as purportedly being anticipated by the references US 3,950,073 and US Application 2002/0076188, respectively. Claim 6, as amended, reads as follows:

6. A device, comprising:  
a waveguide having a waveguide core, an air-gap cladding engaging a portion of waveguide core, and *an overcoat layer engaging a portion of the air-gap cladding.*

(Emphasis added). The Applicants traverse the rejections and submit that the rejections of claim 6 under 35 U.S.C. §102 should be withdrawn because US 3,950,073 and US Application 2002/0076188 do not disclose, teach, or suggest the highlighted portions in amended claim 6 above. Thus, the rejection to claim 6 should be withdrawn.

In addition, the Applicants respectfully submit that pending dependent claims 7-9 and 17-19 include every feature of independent claim 6. Thus, pending dependent claims 7-9 and 17-19 are allowable over the prior art of record.

### Claims 20-27

Claims 20 through 27 have been added to more clearly define embodiments, among others, of the present invention and are allowable for at least the reasons that claims 1-9 and 14-19 are allowable. Therefore, the Applicants request that claims 20 through 27 be allowed to issue.

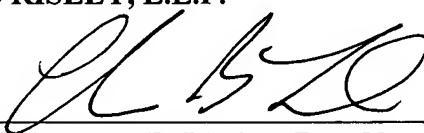
### **CONCLUSION**

The Applicants respectfully request that this application and all presently pending claims be allowed to issue. If the Examiner has any questions or comments regarding Applicants' response, the Examiner is encouraged to telephone Applicants' undersigned counsel.

Respectfully submitted ,

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